Filed 8/19/13 P. v. Sanders CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER ADAM SANDERS, Defendant and Appellant.	A134386 (Lake County Super. Ct. No. CR917725)

Christopher Adam Sanders appeals from a judgment upon a jury verdict finding him guilty of lewd and lascivious acts upon a minor under the age of 14 (Pen. Code,[1] § 288, subd. (a) (count one)); two counts of lewd and lascivious acts upon a minor by use of force or duress (§ 288, subd. (b)(1) (counts two and three)); three or more acts of substantial sexual contact with a minor under the age of 14 by a resident molester (§ 288.5, subd. (a) (count four)); and unlawful sexual intercourse with a minor under the age of 16 (§ 261.5, subd. (d) (count five)). The jury also found true the allegations of substantial sexual contact within the meaning of section 1203.066, subdivision (a)(8). Defendant contends that there is insufficient evidence of duress to support the jury's findings that defendant was guilty of counts two and three. He also argues that the court erroneously imposed a booking fee, and that it violated his right to counsel by denying his request for funding of a false confession expert. We affirm.

[1] All further undesignated statutory references are to the Penal Code.

I. FACTS

K.H. was born in December 1993. She met defendant when she was 10 or 11 years old. He dated her mother and they began living together. K.H. first lived with them in a house in Lower Lake. Defendant and K.H.'s mother married; defendant became K.H.'s stepfather in 2007. They lived in Lower Lake for a year before moving to a house on Buckeye Street in Clearlake. Defendant's daughter, and K.H.'s younger sister also lived in the house. They lived there for about seven months to a year before moving to Hidden Valley for a year and then to Utah Street in Clearlake for about a year. When K.H. was in the eighth grade, they moved to a house on Verna Way in Lucerne. K.H. testified that defendant committed numerous acts of sexual molestation against her at their various residences.

(a) The Buckeye Incidents

The first incident occurred during the summer when K.H. was 11 years old. Defendant was playing a tickling game with her which went "too far." He started to tickle her but then put his hands down her pajama pants and touched her vagina with a rubbing motion. Defendant penetrated her vagina with his finger and asked her if it tickled. K.H. felt uncomfortable but did not know what to do. The following day defendant told her not to tell anyone about the incident. He said that if anyone found out, they would both be put in jail and she would never see her mother again.

About a week later, defendant came into the bedroom that K.H. shared with her sister in the middle of the night. He crawled into K.H.'s bed and woke her up, and started to tickle her. He pulled down her pajama pants and her underwear, put his fingers in her vagina and then tried to have sexual intercourse with her for about five minutes. K.H. testified that defendant penetrated her vagina a little but not fully because it caused her pain. K.H. said "ouch" and defendant stopped, saying "maybe another time." K.H. did not tell anyone about the incident because she was scared. Defendant told her she would be taken away from her mother.

K.H. testified that defendant molested her several times when they were living on Buckeye Street. She could not remember certain times "because it just happened so

frequently." She did testify, however, that defendant tried to have sexual intercourse with her again while she was sleeping in her room. He crawled into bed with her and began rubbing her leg and her back. He took off her pajama pants and tried to put his penis in her vagina. It hurt and K.H. kept saying, "ouch" but defendant persisted. He also touched her vagina with his fingers. He was not wearing a condom and he did not ejaculate.

Defendant tried to have sexual intercourse with her frequently. His penis eventually "fit and it didn't hurt that much any more." He would also touch her breasts when he engaged in sexual intercourse with her.

Defendant also orally copulated K.H. K.H.'s mother was at work; defendant was in charge of K.H. and her sister when their mother was at work. The incidents of sexual molestation occurred about three times per week. K.H. also orally copulated defendant but did not recall when or how many times it happened.

K.H. did not tell anyone about the instances of sexual abuse because she was scared and afraid of getting in trouble. Defendant had told her that she would be taken away and would never see her mother or her family.

(b) Hidden Valley Incidents

In the sixth grade, K.H. moved to a house on Deer Hollow Road in Hidden Valley. She lived with her younger sister, her mother, defendant, defendant's daughter, and Richard B., defendant's friend. Defendant would come into K.H.'s bedroom in the mornings before he went to work and engage in sexual intercourse with her. The incidents occurred more frequently than at Buckeye, and happened almost every day during the work week. He also orally copulated her during this period though she could not recall how often. Defendant rarely used a condom when he engaged in sexual intercourse with her.

(c) Clearlake Incidents

When K.H. was 13 years old, she lived on Utah Street in Clearlake with her younger sister, her mother, defendant and his daughter, and Richard B.. Defendant continued to sexually abuse her but not as often because she would cry afterwards. She

felt "really, really bad" and didn't want to wake up. Defendant told her, "We can stop this if you want." K.H. responded that she wanted to stop, but defendant would continue the abuse the following week. She thought about telling someone about the abuse but she was scared of losing her family and her mother.

(d) Lucerne Incidents

K.H. moved to Verna Way in Lucerne with her family when she was almost 14 years old. Defendant continued to have sexual intercourse with her, and some oral copulation. The abuse occurred about once a week.

In January 2009, K.H. told her mother about the abuse. K.H.'s friend had been raped on New Year's Day and K.H. wanted her mother's advice on how she could help. When K.H. explained why S.W. had not reported the rape to anyone, K.H. said, "It's not that easy." Her mother asked, "What are you talking about?" K.H. then told her mother that defendant had been sexually abusing her. That same day, they reported the abuse to the police. At Officer Hobb's direction, K.H. placed a pretext call to defendant.

(e) Corroborating evidence

Amy Sanders, K.H.'s mother, testified that she met defendant in 2004. She began living with defendant in August 2004, and they were married in February 2007. In September 2004, she and her children moved into an apartment with defendant in Lower Lake. There were times when defendant watched her children. Sanders worked long hours at her job and often worked overtime and on weekends. Her children were consequently often left alone with defendant.

They lived on Verna Way in Lucerne beginning in September 2008. In December 2008, she was looking for defendant at home when she found him in the bedroom lying down on a bed with K.H. with his arms and legs wrapped around her. Sanders tapped defendant on the shoulder because it looked like he and K.H. were sleeping. Defendant rolled out of bed and Sanders saw that he had an erection. She started to yell at him and asked him what he was doing next to her daughter with a "hard on." Defendant claimed that he had fallen asleep and woke up with an erection. Sanders thought maybe she had overreacted because defendant had said he was asleep.

On January 4, 2009, K.H. had just returned home from a visit with her grandmother and was showing Sanders her new jeans. Sanders told K.H. that she needed to take care of the jeans; K.H. had previously lent a friend a pair of jeans that had been returned with the zipper ripped out. K.H. then told Sanders that her friend had been raped and that was how the jeans were ripped. Sanders said that they needed to contact the police. K.H. became upset and said "Well, these things aren't that easy to talk about." Sanders thought something might have happened to K.H., too, so she asked her to tell her what happened. K.H. ran to her room and was very upset. Sanders begged her to tell her what happened. K.H. responded, "I don't want you guys to get a divorce." Sanders realized that defendant had done something to K.H. When she confirmed with K.H. that defendant had raped her, they left the house. Sanders testified that K.H. did not have any boyfriends and did not go on dates.

Officer Hobbs interviewed K.H. and Sanders on January 4, 2009. Hobbs asked K.H. to make a pretext call to defendant to see if he would make any admissions over the phone. An audiotape of the telephone conversation was played for the jury. During the call, the following colloquy occurred: "[K.H.]: She thinks that I'm having sex. [¶] [DEFENDANT]: Are you freaking kidding me? [¶] [K.H.]: Yeah. Have you told mom about anything? [¶] [DEFENDANT]: No. Where the hell is everybody? Where the hell has everybody been? [¶] [K.H.] I don't know. [¶] [DEFENDANT]: You don't know? [¶] [K.H.]: You didn't tell mom anything? [¶] [DEFENDANT]: Nobody'd know. [¶] [K.H.]: You haven't told her anything about us? [¶] [DEFENDANT]: No."

The conversation continued, with defendant inquiring about where K.H. and Sanders were because they had been gone from the house for four hours. K.H. then said, "Um . . . are you sure you haven't told mom anything? [¶] [DEFENDANT]: Positive. I wouldn't I wouldn't tell mom anything like that. [¶] [K.H.]: Can we stop doing this then? [¶] [DEFENDANT]: Yeah. [¶] [K.H.]: Kay. [¶] [DEFENDANT]: Yeah for real."

Hobbs interviewed defendant the following day. An audiotape of the interview was played for the jury. Initially defendant denied any sexual abuse, but he subsequently

claimed that K.H. initiated sexual contact with him. He admitted that K.H. manually stimulated his penis until he ejaculated; that he had sex with K.H. ten times, that she had orally copulated him twice, that he had orally copulated her twice, and that they had sexual intercourse on two occasions. He said that the incidents were consensual.

Roberta Bell, a registered nurse, conducted a sexual assault examination of K.H. on January 8, 2009. She found that K.H. had six clefts or healed lacerations on her hymen, and a hematoma, a deep bruise on the right side of her hymen. K.H.'s vagina also had granulation tissue which showed that the skin on the vagina was healing from abrasion. She opined that the hematoma that was on the cleft at the right edge of K.H.'s hymen was at most four weeks old. Bell suspected that the other clefts were older. Bell testified that her examination of K.H. was consistent with K.H.'s history of digital penetration and sexual intercourse.

(f) Defense evidence

Defendant testified on his own behalf. He denied that he sexually molested K.H. He claimed that he confessed during the interrogation by Hobbs because he believed Hobbs had given him only two options — to admit he was a rapist or admit consensual sexual relations with K.H. He was not given the option to say nothing happened. Defendant claimed that he started "making up stuff" that Hobbs wanted to hear.

In rebuttal, the prosecution played a tape of a telephone conversation defendant made to his mother while he was in jail. When his mother asked him why the police were accusing him, defendant responded, "Well, let me tell you this, mom, she's come after me sexually when she wanted something."

II. DISCUSSION

1. Duress

Defendant contends that there was insufficient evidence to support the jury's finding of duress that he committed lewd or lascivious acts on a minor by force or duress, as charged in counts two and three.

We review the judgment under the substantial evidence standard. (*People v. Hatch* (2000) 22 Cal.4th 260, 272.) Under this standard, we must review " 'the whole

record in the light most favorable to the judgment' and decide 'whether it discloses substantial evidence . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' " (*Ibid.*, quoting *People v. Johnson* (1980) 26 Cal.3d 557, 578.) If the circumstances reasonably justify the verdict, we cannot reverse merely because a contrary finding might also be reasonably deduced from the circumstances. (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) We will reverse only if it "clearly appear[s] that upon no hypothesis whatever is there sufficient substantial evidence to support [the judgment]." (*Ibid.*)

Section 288, subdivision (b)(1) requires the lewd act to be committed "by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person . . . ." Duress, as used in this context means, "a direct or implied threat of force, violence, danger, hardship or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to (1) perform an act which otherwise would not have been performed or, (2) acquiesce in an act to which one otherwise would not have submitted. [¶] The total circumstances, including the age of the victim, and his relationship to defendant are factors to be considered in appraising the existence of duress." (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 50–51, fn. omitted, disapproved on other grounds in *People v. Soto* (2011) 51 Cal.4th 229, 248, fn.12 (*Soto*).) "Other relevant factors include threats to harm the victim, physically controlling the victim when the victim attempts to resist, and warnings to the victim that revealing the molestation would result in jeopardizing the family." (*People v. Cochran* (2002) 103 Cal.App.4th 8, 14, disapproved on other grounds in *Soto, supra,* 51 Cal.4th at p. 248, fn. 12.) "Duress cannot be established unless there is evidence that 'the victim['s] participation was impelled, at least partly, by an implied threat . . . .' " (*People v. Espinoza* (2002) 95 Cal.App.4th 1287, 1321, quoting *People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1580.) " 'Where the defendant is a family member and the victim is young, . . . the position of dominance and authority of the defendant and his continuous exploitation of the victim' is relevant to the existence of duress.' " (*People v. Senior* (1992) 3 Cal.App.4th 765, 775.)

Here, there was sufficient evidence of duress. K.H. was just 11 years old when the sexual molestation started. Defendant, who was in a position of trust and stood in the role of a parent to K.H., took advantage of that trust and threatened her with jeopardizing her family if she revealed the abuse. (See *People v. Schultz* (1992) 2 Cal.App.4th 999, 1005 [where defendant is a family member and victim is young, the position of defendant's authority and his continuous exploitation of victim are relevant to the existence of duress].) Defendant threatened K.H. the day following the first incident of abuse, and he reiterated the threat on subsequent occasions instilling fear in K.H. that she would lose her family.[2] Defendant not only told her that she would be put in jail, but that she would be taken away from her mother. In sum, the evidence supported the finding that defendant's lewd acts upon K.H. were committed while K.H. was under duress. (See *People v. Senior*, *supra*, 3 Cal.App.4th at pp. 775–776.)

Defendant's reliance on *People v. Hecker* (1990) 219 Cal.App.3d 1238, disapproved on other grounds in *Soto*, *supra*, 51 Cal.4th at p. 248, fn. 12, is misplaced. There, the court determined that there was no evidence of duress where the victim admitted that she was not afraid of the defendant, and there was no evidence that the defendant threatened her. (*Id.* at p. 1250.) The court held that psychological coercion without more did not establish duress. (*Ibid.*)

In *People v. Cochran*, *supra*, 103 Cal.App.4th at p. 15, the court determined that its earlier decision in *Hecker* was overbroad. "The very nature of duress is psychological coercion. A threat to a child of adverse consequences, such as suggesting the child will be breaking up the family or marriage if she reports or fails to acquiesce in the molestation, may constitute a threat of retribution and may be sufficient to establish duress, particularly if the child is young and the defendant is her parent. We also note

[2] Defendant suggests that any psychological coercion was not used to accomplish the sexual acts but rather to dissuade K.H. from revealing them. Consequently, he argues any coercion did not constitute the use of duress to commit the acts. We disagree. The evidence shows that defendant threatened K.H. and that she submitted to the acts out of fear that she would be taken from her family and that her mother's relationship with defendant would be jeopardized.

that such a threat also represents a defendant's attempt to isolate the victim and increase or maintain her vulnerability to his assaults." (*Ibid.*) These considerations are particularly apt here where K.H. believed that she was continually under the threat that she would lose her mother and family if she reported the abuse. During the years of abuse, she did not report the abuse because she was afraid of getting into trouble and losing her family. She asked defendant to stop the abuse but he continued the sexual molestations despite his assurance that he would stop. Moreover, defendant was in a position of authority over K.H. which contributed to K.H.'s vulnerability. In sum, the evidence supports the jury's finding of duress.

2. Booking fee

Defendant contends that the court erroneously imposed a $70.09 criminal justice administration (booking) fee pursuant to Government Code section 29550, subdivision (c). He argues that the section authorizes only recovery of a booking fee by a county and he was arrested by the Clearlake police department which is not a county agency, but a department of the city of Clearlake. He acknowledges that he did not raise this issue below but contends that the issue is cognizable on appeal, citing *People v. Smith* (2001) 24 Cal.4th 849, 852, because it is correctable without reference to any factual findings in the record. In *Smith*, our Supreme Court held that waiver rule was not applicable to an erroneous imposition of a parole revocation fine where the error was correctable without referring to factual findings in the record. (*Id.* at pp. 852–853.) Defendant's contention is thus cognizable on appeal.

The argument, however, lacks merit. The record shows that defendant was arrested by the Clearlake police and transported to the Lake County jail. As the Attorney General points out, under Government Code section 29550, Lake County was entitled to impose a fee upon the city of Clearlake for reimbursement of expenses relating to

booking defendant into the county jail.[3] Clearlake, in turn, under Government Code section 29550.1, was entitled to recover that fee from defendant following his conviction.[4] The booking fee was therefore proper.

Defendant's contention that the court erred in imposing the booking fee without finding that he had the ability to pay the fine is not cognizable on appeal. Defendant forfeited the claim because he did not raise it in the trial court. "[B]ecause a court's imposition of a booking fee is confined to factual determinations, a defendant who fails to challenge the sufficiency of the evidence at the proceeding when the fee is imposed may not raise the challenge on appeal." (*People v. McCullough* (2013) 56 Cal.4th 589, 597.)

3. False confession expert

Finally, defendant contends that the trial court's denial of his request for funding of a false confession expert violated his right to counsel, due process, and equal protection. We conclude that the trial court properly denied the request.

Prior to trial, defendant filed an ex parte request for funding of a false confession expert. Defendant's counsel[5] filed a declaration in which he stated that during defendant's interview with the police, he denied any sexual molestation of K.H. approximately 50 times. Counsel averred that while defendant ultimately admitted committing multiple sexual acts involving K.H., he did so only after he was coerced by law enforcement into confessing to the crimes. Counsel declared that he could not

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[3] Government Code section 29550, subdivision (a)(1) provides in relevant part: "a county may impose a fee upon a city . . . for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city . . . where the arrested persons are brought to the county jail for booking or detention."

[4] Government Code section 29550.1 provides that "[a]ny city . . . whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest."

[5] The motion was filed by David Markham in May 2009. Chris Andrian replaced Markham in March 2010 and conducted the trial.

adequately represent defendant without the assistance of a qualified expert witness on false confessions. He included the curriculum vitae for the requested expert, Dr. Richard A. Leo. On defendant's behalf, counsel requested $2,500 in order to hire Dr. Leo. In support of the request, he attached defendant's financial declaration which indicated that defendant had monthly income from unemployment of $1,300 and monthly expenses of $600. The court declined to authorize funds for the expert.

It is well settled that "the right to effective assistance of counsel entitles indigent defendants to access to public funds for expert services. [Citations.] [¶] However, it is only *necessary* services to which the indigent defendant is entitled, and the burden is on the defendant to show that the expert's services are necessary to his defense." (*People v. Gaglione* (1994) 26 Cal.App.4th 1291, 1304.)

Evidence Code section 730 specifically addresses the court's authority to appoint an expert to assist in the trial of a matter: "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court." In criminal cases, the court is required to order the county to pay the expert's fee. (Evid. Code, § 731, subd. (a)(1).)

Thus, in order to support a request for the appointment of an expert witness, a defendant must show both that he is indigent and that the witness is necessary to his defense. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 319–320; *People v. Worthy* (1980) 109 Cal.App.3d 514, 520.) The decision whether to grant a defendant's request for the appointment of an expert witness rests within the sound discretion of the trial court. (*People v. Gaglione, supra,* 26 Cal.App.4th at p. 1304.)

To demonstrate a need for the services of an expert, a defendant should support his request by reference to " ' "the general lines of inquiry he wishes to pursue, being as specific as possible." ' " (*Corenevsky v. Superior Court*, *supra*, 36 Cal.3d at p. 320.) In making a request, a defendant should indicate what assistance an expert could provide and why cross-examination or other means of attacking the People's case would be inadequate in the case. (*People v. Hurley* (1979) 95 Cal.App.3d 895, 899.)

Here, the record is inadequate to support defendant's claim of indigency. While his financial declaration stated that he received $1,300 in unemployment and had monthly expenses of $600, the balance of $700 could presumably have included a payment toward the $2,500 fee for Dr. Leo. In addition, defendant was represented by retained counsel at trial.[6] The fact that defendant retained counsel was a factor that the trial court could consider in determining whether defendant had established his indigency. (*Tran v. Superior Court* (2001) 92 Cal.App.4th 1149, 1155 and fn. 3; *People v. Worthy, supra,* 109 Cal.App.3d at p. 520 ["We concur in the concept that if defendant is able to pay counsel, by whatever means, his indigency has not been established."") Hence, the record fails to support defendant's claim of indigency.

Further, even if defendant was indigent at the time of trial, his request failed to demonstrate the necessity for an expert witness on false confessions. His counsel's declaration stated only that he required an expert "to properly evaluate defendant's claim that his confessions were coerced by law enforcement." Counsel did not proffer any other explanation or justification for the expert or explain why cross-examination of the pertinent witnesses would not be effective. (See *People v. Hurley*, *supra*, 95 Cal.App.3d at pp. 899–900 [defendant, who sought expert on eyewitness identification, did not set forth reasons why cross-examination would not be adequate to attack the identifications in the case].) Moreover, this was not a case in which defendant's confession was the key evidence against him. Rather, K.H.'s testimony was central to the prosecution's case,

[6] The probation officer's report on defendant's bail status states that defendant owed approximately $30,000 to his parents for his attorney and bail bondsman.

and her testimony was corroborated in part by her mother and by forensic evidence. On this record, the trial court did not abuse its discretion in denying the request.

III. DISPOSITION

The judgment is affirmed.

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Rivera, J.

We concur:

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Reardon, Acting P.J.

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Humes, J.